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Chas. F. Harrison, of Leesburg, for plaintiff in error.

Wilton J. Lambert, of Washington, D. C., *C. Vernon Ford* and *Wilson M. Farr*, both of Fairfax, and *R. H. Yeatman*, of Washington, D. C., for defendant in error.

DIRECTOR GENERAL OF RAILROADS et al. v.
HUBBARD'S ADM'R.

March 16, 1922.

[111 S. E. 446.]

1. Railroads (§ 5¼*), New, vol. 6A Key-No. Series—Corporation Not Suable for Injury during Federal Control.—A judgment cannot be rendered against a railroad company for the death of an employee caused by a train operated by the Director General of Railroads.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 567.]

2. Master and Servant (§ 137 (4)*)—Failure to Notify Employee of Transfer of West-Bound Train to East-Bound Track Held Not Negligence.—Where a railroad signal maintainer was proceeding west in his motorcar on the west-bound track, and had passed the last telegraph station at which he could have been reached before the accident when a west-bound train was transferred to the east-bound track, failure to notify him of the change of tracks was not negligence which rendered railroad liable for his death when he set his motorcar over on the east-bound track on hearing the train, without looking to see which track it was on.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 687.]

3. Railroads (§ 137 (2)*)—Railroad Not Negligent in Using Double Tracks Interchangeably for Traffic in Different Directions.—Even though a railroad ordinarily used one of its double tracks for traffic in one direction, and the other for traffic in the opposite direction, it was not negligence for it, as it frequently did, to transfer a train to a track ordinarily used for trains moving in the opposite direction.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

4. Master and Servant (§ 278 (18)*)—Evidence Held to Show Locomotive Engineer Could Not Have Seen Employee at Curve.—Evidence held to show that the engineer of a train, which came out of a cut where the track was curving to the left and struck a signal maintainer, pushing his motorcar on the track while it was still on the curve, could not have seen the other employee if he had been looking constantly, so that his failure to see him was not negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 726.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Master and Servant (§ 137 (4)*)—Railroad Not Chargeable with Negligence for Fireman's Failure to Keep Lookout while Firing.—The primary duty of a locomotive fireman is to fire his engine, and the railroad is not chargeable with negligence because the fireman failed to keep a lookout for an employee on the track ahead of him while he was engaged in firing the engine.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

6. Master and Servant (§ 278 (18)*)—Evidence Held to Show Locomotive Fireman Could Not Have Seen Employee at Curve.—In an action for the death of a railroad employee, struck by a train at a point where the tracks curved to the fireman's side of the engine, evidence held to show that the fireman could not have seen decedent because of an intervening bluff before he began to fire his engine, just before striking decedent.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Alleghany County.

Action by the administrator of Lewis Hubbard, deceased, against the Director General of Railroads and the Chesapeake & Ohio Railway Company. Judgment for plaintiff against both defendants, and defendants bring error. Reversed, and action dismissed.

J. M. Perry, of Staunton, for plaintiffs in error.

Geo. A. Revercomb and *R. C. Stokes*, both of Covington, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.